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January 14, 2008

Jeff S. Jordan, Esquire
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5958; Tom Davis for Congress and Mary Jane Sargent

Dear Mr. Jordan:

By letter dated December 17, 2007, we submitted to you a Statement of Designation of Counsel of Tom Davis for Congress and Mary Jane Sargent, Treasurer, which designated the undersigned and Christopher T. Craig of this firm as its counsel in this matter. In that letter, we also requested an extension of time to and including January 15, 2008, by which to respond to the allegations in MUR 5958. By letter dated December 26, 2007, the Commission granted that extension.

We have now had an opportunity to study the assertions made by the Democratic Party of Virginia (DPV) in its complaint and have concluded that the Federal Election Commission should take no action in this matter. The reasons for that conclusion follow.

1. The complaint should have been returned to the DPV, as required by 11 CFR § 111.5(b), because it failed to meet the technical requirements of 11 CFR § 111.4(d). The latter provision requires that a complaint must contain "a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction." 11 CFR § 111.4(d)(3). The DPV's complaint does no more than assert that Tom Davis for Congress is a "political committee registered with the Federal Election Commission." That assertion is an

inadequate substitute for the recitation of Commission jurisdiction required by 11 C.F.R. § 111.4(d)(3).

2. The DPV's complaint alleges that the respondents violated 2 U.S.C. ¶ 441d(a) in that Tom Davis for Congress allegedly paid for certain advertisements run by the Jeannemarie Devolites Davis campaign for Virginia State Senate without including a statement to that effect as a part of those advertisements.

On these facts, the law does not require that Tom Davis for Congress include a disclaimer of any kind on the campaign advertisements at issue. The law requires that advertisements like those at issue - both print and broadcast - include a statement identifying the payor "if paid for and authorized by a *candidate* [or] an authorized political committee of a *candidate*. . . . (emphasis added)" 2 U.S.C. § 441d(a)(1). A "candidate" is one who seeks nomination for election, or election to federal office. 2 U.S.C. § 431(2). Simply put, Tom Davis is not a "candidate," as that term is defined in the law, and for that reason, neither he nor his authorized committee was required by 2 U.S.C. § 441d to include a statement as to the source of payment for the advertisements at issue in this matter.

The advertisements on behalf of the Jeannemarie Devolites Davis for Virginia State Senate ran in 2007 in connection with the November 2007 state elections. They were unrelated to Congressman Davis or any federal Congressional election.[1] The Bipartisan Campaign Reform Act of 2002 (BCRA), which amended 2 U.S.C. § 441d to add the "paid for" language contained in that section, was aimed at regulating federal elections, not state elections. That is why BCRA couched the obligations that arise under that section as applying to a "candidate" or a candidate's authorized committee, where "candidate" is defined under the statute in terms only of a federal election.

[1] As of the date of this response, Congressman Davis has not announced whether he will stand for re-election in 2008.

3. Both *production* of the state race advertisements at issue in the DPV complaint, and their initial *broadcast* (in the case of the television advertisements) and *mailing/other distribution* (as to the print advertisements), were paid for by the Jeannemarie Devolites Davis for State Senate committee. Accordingly, as required by Virginia law (Va. Code § 24.2-957.1) those advertisements bore the required textual disclosure and full-screen picture and spoken disclosure for the broadcast advertisements, and the textual disclosure required for the print advertisements disclosing that the advertisements were paid for by the Jeannemarie Devolites Davis for State Senate committee.

The attachments to the DPV complaint also show that the Jeannemarie Devolites Davis for State Senate committee properly reported to Virginia the Davis for Congress in-kind contributions. Those reports show that those contributions were made in mid-October 2007, well into the political advertising season. According to the DPV's view of the law, once Tom Davis for Congress began its in-kind contributions by paying for the broadcast of the television advertisements and distribution of print media, the Jeannemarie Devolites Davis campaign was required to append yet another disclosure to its campaign advertisements in order to comply with federal law. Federal law, however, does not control the conduct of a state candidate for election to a state office.

Moreover, because Virginia already has a "stand by your ad" requirement that is almost identical to that contained in 2 U.S.C. § 441d, it makes little sense to require that the federal statute be grafted on to the Virginia disclosure requirement.[2] It makes even less sense where, as here, the production and broadcast/mailing of the advertisements at issue were initially paid for by the Jeannemarie Devolites Davis for State Senate committee in support of her campaign for re-election. Toward the end of

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[2] Like 2 U.S.C.§ 441d, Va. Code § 24.2-957.1 even includes the option of a picture and voice-over by the candidate, or the actual appearance of the candidate in an advertisement announcing that it was paid for by that candidate.

that campaign, in mid to late October 2007, the cost of end-of-campaign broadcasts and distribution of print advertisements was paid for by Tom Davis for Congress. The advertisements did not change, only the technicality of who paid for a particular broadcast or other distribution changed.

The DPV's complaint seems to suggest that on the facts of this case, read literally and taken together, the Virginia and federal "stand by your ad" statutes require that the advertisements at issue first run for a period of time bearing the disclosures that they did and then, when Tom Davis for Congress began paying for their broadcast or publication, an additional disclosure would then have been required reflecting that committee's involvement. Nothing would be accomplished by such a requirement.

Not only would it be cumbersome and unhelpful to the public, it would be confusing. As the DPV would have it, the advertisements at issue would be broadcast or published in two different formats, one with the disclosures that now appear on those advertisements and another, later version of the same advertisements bearing two separate disclosures. The first would read as it does now as to Jeannemarie Devolites Davis for State Senate committee in compliance with Virginia law; the second would have to comply with 2 U.S.C. 441d (a),(c)and(d). The substance of the second, later set of advertisements would not change, but they would include two discrete disclosures, each bearing a full screen likeness of state Senator Jeannemarie Devolites Davis and Congressman Tom Davis either mouthing the required disclosure, or a photograph and voice-over reciting the disclosure. The DPV's nonsensical reading of the Virginia and federal statutes taken together would require that in the latter part of the Devolites Davis re-election campaign the very same advertisement that ran one day with a single disclosure would then have to carry two disclosures, including one from Tom Davis, who was not a candidate in that state race.

Such a requirement is unnecessary and uninformative. The purpose of the federal and Virginia

"stand by your ad" statutes is to ensure that those who run political advertisements are held accountable for them, and that there is no mystery about the source of the advertisement. Both goals were achieved here. The advertisements at issue were clearly in support of the re-election of Virginia Senator Jeannemarie Devolites Davis, they had nothing to do with Congressman Tom Davis, and they included a disclosure (picture and all) that was substantively identical to what is required by 2 U.S.C. § 441d. Almost concurrently with those disclosures, the Devolites Davis for Senate campaign reported the Tom Davis for Congress in-kind contributions.

The overlapping requirements of the federal and the Virginia disclosure laws should not apply to these advertisements in the re-election campaign at issue. It is fortuitous that there are two almost identical statutes that could apply to the late-campaign Jeannemarie Devolites Davis advertisements that were paid for by Tom Davis for Congress. But the goals of both statutes were met on these facts, and both committees have timely and accurately reported the in-kind contributions at issue.[3] Given the unusual set of facts here, there is no reason to make the federal statute a trap for the unwary. The requirements of 2 U.S.C § 441d should not be applied on these facts to the advertisements that are the subject of the DPV complaint.

For the foregoing reasons, no action should be taken against either Tom Davis for Congress or its treasurer, and this matter should be closed.

Sincerely,

Robert R. Sparks, Jr.

cc: Ms. Mary Jane Sargent

[3] Tom Davis for Congress will file its fourth quarter 2007 campaign finance reports on or about the same date as the date of this response.